

AMENDED IN ASSEMBLY JUNE 7, 2007

AMENDED IN SENATE APRIL 19, 2007

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 998

Introduced by Senator Cox

February 23, 2007

An act to amend Sections ~~25165~~ 1502, 2117, 6210, 8210, 25404, 28711, 31119, and 31155 of, and to add Sections 25530.1, 28716, 29105, 29538, 31204, and 31400.1 to, the Corporations Code, and to amend Sections 22050, 22105, 22109, ~~and 50123~~ 22112, 50123, and 50205 of, and to add Sections 12332, 12404, 17703, 22169, 22170, 23011.5, 23015, 30218, 30609, and 50512 to, the Financial Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 998, as amended, Cox. Commissioner of Corporations: business regulation.

(1) Existing law requires domestic corporations, foreign corporations, nonprofit public benefit corporations, and nonprofit mutual benefit corporations to file statements annually with the Secretary of State containing specified information including the street address of its principal executive office.

This bill would require those corporations to also include the mailing address of the corporation in the annual statements in certain circumstances.

(1)

(2) Existing law provides for the regulation, by the Commissioner of Corporations, of issuers of securities, franchises, persons engaged

in the business of making deferred deposit transactions, finance lenders, and check sellers, bill payers, and proraters. A willful violation of the laws regulating these individuals is a crime. *Existing law also provides for the regulation, by the Commissioner of Corporations, of securities depositories.*

This bill would authorize the Commissioner of Corporations, with respect to those individuals, to issue an order censuring, suspending, or barring from any position of employment, management, or control, specified licensees or other persons, and prohibiting licensees or persons from participating in the business, as specified, for prescribed cause.

Under existing law, all applicants, except California corporations, applying for qualification of the sale of securities or registration of an offer to sell franchises are required to file with the commissioner a specified form appointing the commissioner as agent for service of process, as specified.

This bill would extend that exception to California limited partnerships and California limited liability companies.

(3) Existing law provides for the regulation, by the Commissioner of Corporations, of issuers of securities, agents, broker-dealers, investment adviser representatives, and investment advisers, persons engaged in the business of commodities, franchises, check sellers, bill payers, and proraters, escrow agents, finance lenders, persons engaged in the business of making deferred deposit transactions, and mortgage lenders. A willful violation of the laws regulating these individuals is a crime. Existing law also provides for the regulation, by the Commissioner of Corporations, of capital access companies, bucket shops, and securities depositories.

Existing law makes it unlawful to make any untrue statement of a material fact in, among other things, an application filed with the commissioner.

This bill would make it unlawful to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with specified intent. The bill would also make it unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, ~~an investigation, or examination, with specified intent. The bill would specify that a person violating these provisions is liable for any applicable penalty, as specified.~~ Because a willful violation of ~~these~~ *those specified* provisions would be a crime, the bill would impose a state-mandated local program.

(4) *Existing law makes it unlawful to sell any franchise subject to registration without first providing the prospective franchisee with a copy of, among other things, the offering circular, at least 10 business days prior to the execution of any binding franchise or prior to the receipt of any consideration, as specified.*

This bill would instead require the offering circular to be provided to the prospective franchisee at least 14 days prior to the execution of any binding franchise or prior to the receipt of any consideration, as specified.

(2)

(5) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders, as defined, by the commissioner and exempts specified entities from its provisions. Existing law requires the commissioner to investigate an applicant for licensure and, in the case of an applicant that is a corporation, trust, or association, to investigate its principal officers, directors, and certain other persons. Existing law authorizes the commissioner to deny an application for licensure under specified conditions. *Existing law requires licensees to maintain a specified surety bond and to file a copy of that bond with the commissioner.*

This bill would exempt a person from the California Finance Lenders Law if that person is doing business under the laws of any state relating to, among other things, banks, credit unions, and small business investment companies. The bill would require the commissioner, in investigating applications for licensure submitted by a corporation, trust, limited liability company, or association, to additionally investigate the applicant and its managing members. The bill would also authorize the commissioner to deny an application for licensure if the applicant itself has, within the last 10 years, been convicted or plead nolo contendere to a crime or committed specified acts involving dishonesty, fraud, or deceit. *The bill would instead require the licensee to file an original surety bond with the commissioner.*

(3)

(6) Existing law, the California Residential Mortgage Lending Act, provides for the licensing and regulation by the commissioner of persons engaged in the business of making residential mortgage loans or servicing those loans. The California Residential Mortgage Lending Act requires a licensee that ceases to engage in activity regulated by the act, and that no longer desire to be licensed, to inform the commissioner in writing, surrender the license, and file other specified

information with the commissioner, including a plan for the withdrawal from regulated business that includes a closing audit performed by an independent certified public accountant. *Existing law requires licensees to maintain a specified surety bond and to file a copy of that bond with the commissioner.*

This bill would instead require the plan for withdrawal to include either the closing audit or a review or other procedures prescribed by rule or order of the commissioner. *The bill would also instead require the licensee to file an original surety bond with the commissioner.*

(4)

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25165 of the Corporations Code is~~
2 ~~amended to read:~~
3 ~~25165. Every applicant for qualification of the sale of securities~~
4 ~~under this law or every person filing an application or a notice~~
5 ~~under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request~~
6 ~~for or notice of an exemption from qualification (other than a~~
7 ~~California corporation, California limited partnership, California~~
8 ~~limited liability company, or a person licensed as a broker-dealer~~
9 ~~in this state) shall file with the commissioner, in such form as~~
10 ~~prescribed by rule, an irrevocable consent appointing the~~
11 ~~commissioner or his or her successor in office to be the applicant's~~
12 ~~or person's attorney to receive service of any lawful process in~~
13 ~~any noncriminal suit, action or proceeding against the applicant~~
14 ~~or person or the successor, executor or administrator thereof, which~~
15 ~~arises under this law or any rule or order hereunder after the~~
16 ~~consent has been filed, with the same force and validity as if served~~
17 ~~personally on the person filing the consent. A person who has filed~~
18 ~~such a consent in connection with a previous qualification under~~
19 ~~this law (or application for a permit under any prior law if the~~
20 ~~application under this law states that such consent is still effective),~~

1 or in connection with a notice filing under Section 25100.1,
2 25101.1, 25102.1, and 25230.1, need not file another. Service may
3 be made by leaving a copy of the process in the office of the
4 commissioner but it is not effective unless (1) the plaintiff, who
5 may be the commissioner in a suit, action or proceeding instituted
6 by him or her, forthwith sends notice of the service and a copy of
7 the process by registered or certified mail to the defendant or
8 respondent at the last address on file with the commissioner, and
9 (2) the plaintiff's affidavit of compliance with this section is filed
10 in the case on or before the return day of the process, if any, or
11 within such further time as the court allows.

12 *SECTION 1. Section 1502 of the Corporations Code is amended*
13 *to read:*

14 1502. (a) Every corporation shall file, within 90 days after the
15 filing of its original articles and annually thereafter during the
16 applicable filing period, on a form prescribed by the Secretary of
17 State, a statement containing all of the following:

18 (1) The names and complete business or residence addresses of
19 its incumbent directors.

20 (2) The number of vacancies on the board, if any.

21 (3) The names and complete business or residence addresses of
22 its chief executive officer, secretary, and chief financial officer.

23 (4) The street address of its principal executive office.

24 (5) *The mailing address of the corporation, if different from the*
25 *street address of its principal executive office.*

26 (5)

27 (6) If the address of its principal executive office is not in this
28 state, the street address of its principal business office in this state,
29 if any.

30 (6)

31 (7) A statement of the general type of business that constitutes
32 the principal business activity of the corporation (for example,
33 manufacturer of aircraft; wholesale liquor distributor; or retail
34 department store).

35 (b) The statement required by subdivision (a) shall also
36 designate, as the agent of the corporation for the purpose of service
37 of process, a natural person residing in this state or a corporation
38 that has complied with Section 1505 and whose capacity to act as
39 an agent has not terminated. If a natural person is designated, the
40 statement shall set forth that person's complete business or

1 residence *street* address. If a corporate agent is designated, no
2 address for it shall be set forth.

3 (c) If there has been no change in the information in the last
4 filed statement of the corporation on file in the Secretary of State's
5 office, the corporation may, in lieu of filing the statement required
6 by subdivisions (a) and (b), advise the Secretary of State, on a
7 form prescribed by the Secretary of State, that no changes in the
8 required information have occurred during the applicable filing
9 period.

10 (d) For the purposes of this section, the applicable filing period
11 for a corporation shall be the calendar month during which its
12 original articles were filed and the immediately preceding five
13 calendar months. The Secretary of State shall mail a ~~form~~ *notice*
14 for compliance with this section to each corporation approximately
15 three months prior to the close of the applicable filing period. The
16 ~~form~~ *notice* shall state the due date ~~thereof for compliance~~ and
17 shall be mailed to the last address of the corporation according to
18 the records of the Secretary of State. The failure of the corporation
19 to receive the ~~form~~ *notice* is not an excuse for failure to comply
20 with this section.

21 (e) Whenever any of the information required by subdivision
22 (a) is changed, the corporation may file a current statement
23 containing all the information required by subdivisions (a) and
24 (b). In order to change its agent for service of process or the address
25 of the agent, the corporation must file a current statement
26 containing all the information required by subdivisions (a) and
27 (b). Whenever any statement is filed pursuant to this section, it
28 supersedes any previously filed statement and the statement in the
29 articles as to the agent for service of process and the address of
30 the agent.

31 (f) The Secretary of State may destroy or otherwise dispose of
32 any statement filed pursuant to this section after it has been
33 superseded by the filing of a new statement.

34 (g) This section shall not be construed to place any person
35 dealing with the corporation on notice of, or under any duty to
36 inquire about, the existence or content of a statement filed pursuant
37 to this section.

38 (h) The statement required by subdivision (a) shall be available
39 and open to the public for inspection. The Secretary of State, ~~not~~
40 ~~later than December 31, 2004,~~ shall provide access to all

1 information contained in this statement by means of an online
2 database.

3 (i) In addition to any other fees required, a corporation shall
4 pay a five-dollar (\$5) disclosure fee when filing the statement
5 required by subdivision (a). One-half of the fee shall be utilized
6 to further the provisions of this section, including the development
7 and maintenance of the online database required by subdivision
8 (h), and one-half shall be deposited into the Victims of Corporate
9 Fraud Compensation Fund established in Section 1502.5.

10 (j) A corporation shall certify that the information it provides
11 pursuant to subdivisions (a) and (b) is true and correct. No claim
12 may be made against the state for inaccurate information contained
13 in the statements.

14 *SEC. 2. Section 2117 of the Corporations Code is amended to*
15 *read:*

16 2117. (a) Every foreign corporation (other than a foreign
17 association) qualified to transact intrastate business shall file,
18 annually during the applicable filing period, on a form prescribed
19 by the Secretary of State, a statement containing the following:

20 (1) The names and complete business or residence addresses of
21 its chief executive officer, secretary, and chief financial officer.

22 (2) The street address of its principal executive office.

23 (3) *The mailing address of the corporation, if different from the*
24 *street address of its principal executive office.*

25 ~~(3)~~

26 (4) The street address of its principal business office in this
27 state, if any.

28 ~~(4)~~

29 (5) A statement of the general type of business that constitutes
30 the principal business activity of the corporation (for example,
31 manufacturer of aircraft; wholesale liquor distributor; or retail
32 department store).

33 (b) The statement required by subdivision (a) shall also
34 designate, as the agent of the corporation for the purpose of service
35 of process, a natural person residing in this state or a corporation
36 that has complied with Section 1505 and whose capacity to act as
37 the agent has not terminated. If a natural person is designated, the
38 statement shall set forth the person's complete business or
39 residence *street* address. If a corporate agent is designated, no
40 address for it shall be set forth.

(c) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, ~~not later than December 31, 2004,~~ shall provide access to all information contained in the statement by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar (\$5) disclosure fee upon filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section, except that “articles” shall mean the filing pursuant to Section 2105, and “corporation” shall mean a foreign corporation.

SEC. 3. Section 6210 of the Corporations Code is amended to read:

6210. (a) Every corporation shall, within 90 days after the filing of its original articles and biennially thereafter during the applicable filing period, file, on a form prescribed by the Secretary of State, a statement containing: (1) the names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer; ~~and~~ (2) the street address of its principal office in this state, if any; *and (3) the mailing address of the corporation, if different from the street address of its principal executive office or if the corporation has no principal office address in this state.*

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or any domestic

1 or foreign or foreign business corporation that has complied with
2 Section 1505 and whose capacity to act as an agent has not
3 terminated. If a natural person is designated, the statement shall
4 set forth the person's complete business or residence *street* address.
5 If a corporate agent is designated, no address for it shall be set
6 forth.

7 (c) For the purposes of this section, the applicable filing period
8 for a corporation shall be the calendar month during which its
9 original articles were filed and the immediately preceding five
10 calendar months. The Secretary of State shall mail a ~~form~~ *notice*
11 for compliance with this section to each corporation approximately
12 three months prior to the close of the applicable filing period. The
13 ~~form~~ *notice* shall state the due date ~~thereof for compliance~~ and
14 shall be mailed to the last address of the corporation according to
15 the records of the Secretary of State. Neither the failure of the
16 Secretary of State to mail the ~~form~~ *notice* nor the failure of the
17 corporation to receive it is an excuse for failure to comply with
18 this section.

19 (d) Whenever any of the information required by subdivision
20 (a) is changed, the corporation may file a current statement
21 containing all the information required by subdivisions (a) and
22 (b). In order to change its agent for service of process or the address
23 of the agent, the corporation must file a current statement
24 containing all the information required by subdivisions (a) and
25 (b). Whenever any statement is filed pursuant to this section, it
26 supersedes any previously filed statement and the statement in the
27 articles as to the agent for service of process and the address of
28 the agent.

29 (e) The Secretary of State may destroy or otherwise dispose of
30 any statement filed pursuant to this section after it has been
31 superseded by the filing of a new statement.

32 (f) This section shall not be construed to place any person
33 dealing with the corporation on notice of, or under any duty to
34 inquire about, the existence or content of a statement filed pursuant
35 to this section.

36 *SEC. 4. Section 8210 of the Corporations Code is amended to*
37 *read:*

38 8210. (a) Every corporation shall, within 90 days after the
39 filing of its original articles and biennially thereafter during the
40 applicable filing period, file, on a form prescribed by the Secretary

1 of State, a statement containing: (1) the names and complete
2 business or residence addresses of its chief executive officer,
3 secretary, and chief financial officer; ~~and~~ (2) the street address of
4 its principal office in this state, if any; (3) *the mailing address of*
5 *the corporation, if different from the street address of its principal*
6 *executive office or if the corporation has no principal office address*
7 *in this state.*

8 (b) The statement required by subdivision (a) shall also
9 designate, as the agent of the corporation for the purpose of service
10 of process, a natural person residing in this state or any domestic
11 or foreign or foreign business corporation that has complied with
12 Section 1505 and whose capacity to act as an agent has not
13 terminated. If a natural person is designated, the statement shall
14 set forth the person's complete business or residence *street* address.
15 If a corporate agent is designated, no address for it shall be set
16 forth.

17 (c) For the purposes of this section, the applicable filing period
18 for a corporation shall be the calendar month during which its
19 original articles were filed and the immediately preceding five
20 calendar months. The Secretary of State shall mail a ~~form~~ *notice*
21 for compliance with this section to each corporation approximately
22 three months prior to the close of the applicable filing period. The
23 ~~form~~ *notice* shall state the due date ~~thereof for compliance~~ and
24 shall be mailed to the last address of the corporation according to
25 the records of the Secretary of State. Neither the failure of the
26 Secretary of State to mail the ~~form~~ *notice* nor the failure of the
27 corporation to receive it is an excuse for failure to comply with
28 this section.

29 (d) Whenever any of the information required by subdivision
30 (a) is changed, the corporation may file a current statement
31 containing all the information required by subdivisions (a) and
32 (b). In order to change its agent for service of process or the address
33 of the agent, the corporation must file a current statement
34 containing all the information required by subdivisions (a) and
35 (b). Whenever any statement is filed pursuant to this section, it
36 supersedes any previously filed statement and the statement in the
37 articles as to the agent for service of process and the address of
38 the agent.

1 (e) The Secretary of State may destroy or otherwise dispose of
2 any statement filed pursuant to this section after it has been
3 superseded by the filing of a new statement.

4 (f) This section shall not be construed to place any person
5 dealing with the corporation on notice of, or under any duty to
6 inquire about, the existence or content of a statement filed pursuant
7 to this section.

8 *SEC. 5. Section 25404 of the Corporations Code is amended*
9 *to read:*

10 25404. (a) It is unlawful for any person to knowingly alter,
11 destroy, mutilate, conceal, cover up, falsify, or make a false entry
12 in any record, document, or tangible object with the intent to
13 impede, obstruct, or influence the administration or enforcement
14 of this division.

15 (b) *It is unlawful for any person to knowingly make an untrue*
16 *statement to the commissioner during the course of licensing,*
17 *investigation, or examination, with the intent to impede, obstruct,*
18 *or influence the administration or enforcement of any provision*
19 *of this division.*

20 ~~SEC. 2:~~

21 *SEC. 6. Section 25530.1 is added to the Corporations Code,*
22 *to read:*

23 25530.1. In any proceeding under Section 25530, the court
24 may prohibit, conditionally or unconditionally, and permanently
25 or for such period of time as it shall determine, any person who
26 violated Section 25401 from acting as an officer or director of any
27 issuer that has securities qualified pursuant to Section 25110, or
28 that has securities or a transaction exempt from qualification
29 pursuant to Section 25100, 25102, or 25103, if the person's conduct
30 demonstrates unfitness to serve as an officer or director of the
31 issuer.

32 *SEC. 7. Section 28711 of the Corporations Code is amended*
33 *to read:*

34 28711. (a) If the commissioner finds that any of the factors
35 set forth in Section ~~28709~~ 28710 is true with respect to any licensee
36 and that it is necessary for the protection of the public interest that
37 the commissioner immediately suspend or revoke the license of
38 the licensee, the commissioner may issue an order suspending or
39 revoking the license of the licensee.

(b) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom the order is directed may file with the commissioner a request for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the request is filed (or within any longer period to which the licensee consents), the order shall be deemed rescinded. Upon the completion of the hearing, the commissioner shall affirm, modify, or rescind the order.

SEC. 8. Section 28716 is added to the Corporations Code, to read:

28716. (a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

SEC. 9. Section 29105 is added to the Corporations Code, to read:

29105. (a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

SEC. 10. Section 29538 is added to the Corporations Code, to read:

29538. (a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of this division.

1 **(b)** *It is unlawful for any person to knowingly make an untrue*
2 *statement to the commissioner during the course of licensing,*
3 *investigation, or examination, with the intent to impede, obstruct,*
4 *or influence the administration or enforcement of any provision*
5 *of this division.*

6 **SEC. 11.** *Section 31119 of the Corporations Code is amended*
7 *to read:*

8 31119. (a) It is unlawful to sell any franchise in this state ~~which~~
9 *that is subject to registration under this law without first providing*
10 *to the prospective franchisee, at least 10 business 14 days prior to*
11 *the execution by the prospective franchisee of any binding franchise*
12 *or other agreement, or at least 10 business 14 days prior to the*
13 *receipt of any consideration, whichever occurs first, a copy of the*
14 *offering circular, together with a copy of all proposed agreements*
15 *relating to the sale of the franchise.*

16 (b) Nothing in this division shall be construed to prevent a
17 franchisor from providing copies of the offering circular documents
18 to prospective franchisees through electronic means pursuant to
19 any requirements or conditions that may be imposed by rule or
20 order of the commissioner.

21 ~~SEC. 3.~~

22 **SEC. 12.** *Section 31155 of the Corporations Code is amended*
23 *to read:*

24 31155. Every applicant for registration of an offer to sell
25 franchises under this law, by other than a California corporation,
26 California limited partnership, or California limited liability
27 company, shall file with the commissioner, in such form as he *or*
28 *she* by rule prescribed, an irrevocable consent appointing the
29 commissioner or his *or her* successor in office to be his *or her*
30 attorney to receive service of any lawful process in any noncriminal
31 suit, action or proceeding against him *or her* or his *or her*
32 successor, executor or administrator, which arises under this law
33 or any rule or order hereunder after the consent has been filed,
34 with the same force and validity as if served personally on the
35 person filing the consent. A person who has filed such a consent
36 in connection with a previous registration under this law need not
37 file another. Service may be made by leaving a copy of the process
38 in the office of the commissioner but it is not effective unless (a)
39 the plaintiff, who may be the commissioner in a suit, action or
40 proceeding instituted by him, forthwith sends notice of the service

1 and a copy of the process by registered or certified mail to the
2 defendant or respondent at his last address on file with the
3 commissioner, and (b) the plaintiff's affidavit of compliance with
4 this section is filed in the case on or before the return day of the
5 process, if any, or within such further time as the court allows.

6 ~~SEC. 4.~~

7 *SEC. 13.* Section 31204 is added to the Corporations Code, to
8 read:

9 31204. (a) ~~Notwithstanding any other provision of law, it~~ *It*
10 is unlawful for any person to knowingly alter, destroy, mutilate,
11 conceal, cover up, falsify, or make a false entry in any record,
12 document, or tangible object with the intent to impede, obstruct,
13 or influence the administration or enforcement of any provision
14 of this division.

15 (b) ~~Notwithstanding any other provision of law, it~~ *It* is unlawful
16 for any person to knowingly make an untrue statement to the
17 commissioner during the course of licensing, ~~an investigation or~~
18 ~~examination.~~ *investigation, or examination, with the intent to*
19 *impede, obstruct, or influence the administration or enforcement*
20 *of any provision of this division.*

21 (c) ~~Any person who violates any provision of this section shall~~
22 ~~be liable for any administrative, civil, or criminal penalty~~
23 ~~authorized by law.~~

24 ~~SEC. 5.~~

25 *SEC. 14.* Section 31400.1 is added to the Corporations Code,
26 to read:

27 31400.1. In any proceeding under Section 31400, the court
28 may prohibit, conditionally or unconditionally, and permanently
29 or for such period of time as it shall determine, any person who
30 violated Section 31200, 31201, or 31202 from acting as an officer
31 or director of any franchisor if the person's conduct demonstrates
32 unfitness to serve as an officer or director of the franchisor.

33 ~~SEC. 6.~~

34 *SEC. 15.* Section 12332 is added to the Financial Code, to read:

35 12332. (a) ~~Notwithstanding any other provision of law, it~~ *It*
36 is unlawful for any person to knowingly alter, destroy, mutilate,
37 conceal, cover up, falsify, or make a false entry in any record,
38 document, or tangible object with the intent to impede, obstruct,
39 or influence the administration or enforcement of any provision
40 of this division.

1 (b) ~~Notwithstanding any other provision of law, it~~ It is unlawful
2 for any person to knowingly make an untrue statement to the
3 commissioner during the course of licensing, ~~an investigation or~~
4 ~~examination.~~ *investigation, or examination, with the intent to*
5 *impede, obstruct, or influence the administration or enforcement*
6 *of any provision of this division.*

7 ~~(c) Any person who violates any provision of this section shall~~
8 ~~be liable for any administrative, civil, or criminal penalty~~
9 ~~authorized by law.~~

10 SEC. 7.

11 SEC. 16. Section 12404 is added to the Financial Code, to read:

12 12404. (a) The commissioner may, after appropriate notice
13 and opportunity for hearing, by order, censure or suspend for a
14 period not exceeding 12 months, or bar from any position of
15 employment, management, or control any licensee, any nonprofit
16 community service organization subject to Section 12104, or any
17 other person, if the commissioner finds either of the following:

18 (1) That the censure, suspension, or bar is in the public interest
19 and that the person has committed or caused a violation of this
20 division or rule or order of the commissioner, which violation was
21 either known or should have been known by the person committing
22 or causing it or has caused material damage to the licensee,
23 nonprofit community service organization, or to the public.

24 (2) That the person has been convicted of or pleaded nolo
25 contendere to any crime, or has been held liable in any civil action
26 by final judgment, or any administrative judgment by any public
27 agency, if that crime or civil or administrative judgment involved
28 any offense involving dishonesty, fraud, or deceit, or any other
29 offense reasonably related to the qualifications, functions, or duties
30 of a person engaged in the business in accordance with the
31 provisions of this division.

32 (b) Within 15 days from the date of a notice of intention to issue
33 an order pursuant to subdivision (a), the person may request a
34 hearing under the Administrative Procedure Act (Chapter 4.5
35 (commencing with Section 11400) of Division 3 of Title 2 of the
36 Government Code). Upon receipt of a request, the matter shall be
37 set for hearing to commence within 30 days after such receipt
38 unless the person subject to this division consents to a later date.
39 If no hearing is requested within 15 days after the mailing or
40 service of such notice and none is ordered by the commissioner,

1 the failure to request a hearing shall constitute a waiver of the right
2 to a hearing.

3 (c) Upon receipt of a notice of intention to issue an order
4 pursuant to this section, the person who is the subject of the
5 proposed order is immediately prohibited from engaging in any
6 activities subject to licensure or exempt from licensure under
7 Section 12104 of the law.

8 (d) Persons suspended or barred under this section are prohibited
9 from participating in any business activity of a licensee or a person
10 exempt from licensure under Section 12104 and from engaging in
11 any business activity on the premises where a licensee or a person
12 exempt from licensure under Section 12104 is conducting business.

13 ~~SEC. 8.~~

14 *SEC. 17.* Section 17703 is added to the Financial Code, to read:

15 ~~17703. (a) Notwithstanding any other provision of law, it~~
16 *is unlawful for any person to knowingly alter, destroy, mutilate,*
17 *conceal, cover up, falsify, or make a false entry in any record,*
18 *document, or tangible object with the intent to impede, obstruct,*
19 *or influence the administration or enforcement of any provision*
20 *of this division.*

21 ~~(b) Notwithstanding any other provision of law, it~~
22 *is unlawful*
23 *for any person to knowingly make an untrue statement to the*
24 *commissioner during the course of licensing, an investigation or*
25 *examination, investigation, or examination, with the intent to*
26 *impede, obstruct, or influence the administration or enforcement*
of any provision of this division.

27 ~~(c) Any person who violates any provision of this section shall~~
28 ~~be liable for any administrative, civil, or criminal penalty~~
29 ~~authorized by law.~~

30 ~~SEC. 9.~~

31 *SEC. 18.* Section 22050 of the Financial Code is amended to
32 read:

33 22050. (a) This division does not apply to any person doing
34 business under any law of any state or of the United States relating
35 to banks, trust companies, savings and loan associations, insurance
36 premium finance agencies, credit unions, small business investment
37 companies, California business and industrial development
38 corporations, or licensed pawnbrokers.

39 (b) This division does not apply to a check casher who holds a
40 valid permit issued pursuant to Section 1789.37 of the Civil Code

1 when acting under the authority of that permit, and shall not apply
2 to a person holding a valid license issued pursuant to Section 23005
3 of the Financial Code when acting under the authority of that
4 license.

5 (c) This division does not apply to a college or university making
6 a loan for the purpose of permitting a person to pursue a program
7 or course of study leading to a degree or certificate.

8 (d) This division does not apply to a broker-dealer acting
9 pursuant to a certificate then in effect and issued pursuant to
10 Section 25211 of the Corporations Code.

11 (e) This division does not apply to any person who makes no
12 more than one loan in a 12-month period as long as that loan is a
13 commercial loan as defined in Section 22502.

14 (f) This division does not apply to any public corporation as
15 defined in Section 67510 of the Government Code, any public
16 entity other than the state as defined in Section 811.2 of the
17 Government Code, or any agency of any one or more of the
18 foregoing, when making any loan so long as the public corporation,
19 public entity, or agency of any one or more of the foregoing
20 complies with all applicable federal and state laws and regulations.

21 (g) This section shall become operative December 31, 2004.

22 ~~SEC. 10.~~

23 *SEC. 19.* Section 22105 of the Financial Code is amended to
24 read:

25 22105. Upon the filing of an application pursuant to Section
26 22101 and the payment of the fees, the commissioner shall
27 investigate the applicant and its general partners and persons
28 owning or controlling, directly or indirectly, 10 percent or more
29 of the outstanding interests or any person responsible for the
30 conduct of the applicant's lending activities in this state, if the
31 applicant is a partnership. If the applicant is a corporation, trust,
32 limited liability company, or association, including an
33 unincorporated organization, the commissioner shall investigate
34 the applicant, its principal officers, directors, managing members,
35 and persons owning or controlling, directly or indirectly, 10 percent
36 or more of the outstanding equity securities or any person
37 responsible for the conduct of the applicant's lending activities in
38 this state. Upon the filing of an application pursuant to Section
39 22102 and the payment of the fees, the commissioner shall
40 investigate the person responsible for the lending activity of the

1 licensee at the new location described in the application. The
2 investigation may be limited to information that was not included
3 in prior applications filed pursuant to this division. If the
4 commissioner determines that the applicant has satisfied this
5 division and does not find facts constituting reasons for denial
6 under Section 22109, the commissioner shall issue and deliver a
7 license to the applicant.

8 For the purposes of this section, “principal officers” shall mean
9 president, chief executive officer, treasurer, and chief financial
10 officer, as may be applicable, and any other officer with direct
11 responsibility for the conduct of the applicant’s lending activities
12 within the state.

13 ~~SEC. 11.~~

14 *SEC. 20.* Section 22109 of the Financial Code is amended to
15 read:

16 22109. (a) Upon reasonable notice and opportunity to be heard,
17 the commissioner may deny the application for any of the following
18 reasons:

19 (1) A false statement of a material fact has been made in the
20 application.

21 (2) The applicant or an officer, director, general partner, person
22 responsible for the applicant’s lending activities in this state, or
23 person owning or controlling, directly or indirectly, 10 percent or
24 more of the outstanding interests or equity securities of the
25 applicant has, within the last 10 years, been convicted of or pleaded
26 nolo contendere to a crime, or committed an act involving
27 dishonesty, fraud, or deceit, if the crime or act is substantially
28 related to the qualifications, functions, or duties of a person
29 engaged in business in accordance with this division.

30 (3) The applicant or an officer, director, general partner, person
31 responsible for the applicant’s lending activities in this state, or
32 person owning or controlling, directly or indirectly, 10 percent or
33 more of the outstanding interests or equity securities of the
34 applicant has violated any provision of this division or the rules
35 thereunder or any similar regulatory scheme of the State of
36 California or a foreign jurisdiction.

37 (b) The application shall be considered withdrawn within the
38 meaning of this section if the applicant fails to respond to a written
39 notification of a deficiency in the application within 90 days of
40 the date of the notification.

1 (c) The commissioner shall, within 60 days from the filing of
2 a full and complete application for a license with the fees, either
3 issue a license or file a statement of issues prepared in accordance
4 with Chapter 5 (commencing with Section 11500) of Part 1 of
5 Division 3 of Title 2 of the Government Code.

6 *SEC. 21. Section 22112 of the Financial Code is amended to*
7 *read:*

8 22112. (a) A licensee shall maintain a surety bond in
9 accordance with this subdivision in the amount of twenty-five
10 thousand dollars (\$25,000). The bond shall be payable to the
11 commissioner and issued by an insurer authorized to do business
12 in this state. ~~A copy of the bond, An original surety bond,~~ including
13 any and all riders and endorsements executed subsequent to the
14 effective date of the bond, ~~shall be filed with the commissioner~~
15 ~~for review and approval prior to execution, and filed with the~~
16 commissioner within 10 days of execution. For licensees with
17 multiple licensed locations, only one surety bond is required. The
18 bond shall be used for the recovery of expenses, fines, and fees
19 levied by the commissioner in accordance with this division or for
20 losses or damages incurred by borrowers or consumers as the result
21 of a licensee's noncompliance with the requirements of this
22 division.

23 (b) When an action is commenced on a licensee's bond, the
24 commissioner may require the filing of a new bond. Immediately
25 upon recovery of any action on the bond, the licensee shall file a
26 new bond. Failure to file a new bond within 10 days of the recovery
27 on a bond, or within 10 days after notification by the commissioner
28 that a new bond is required, constitutes sufficient grounds for the
29 suspension or revocation of the license.

30 ~~SEC. 12.~~

31 *SEC. 22. Section 22169 is added to the Financial Code, to read:*

32 22169. (a) The commissioner may, after appropriate notice
33 and opportunity for hearing, by order, censure or suspend for a
34 period not exceeding 12 months, or bar from any position of
35 employment, management, or control any finance lender, broker,
36 or any other person, if the commissioner finds either of the
37 following:

38 (1) That the censure, suspension, or bar is in the public interest
39 and that the person has committed or caused a violation of this
40 division or rule or order of the commissioner, which violation was

1 either known or should have been known by the person committing
2 or causing it or has caused material damage to the finance lender,
3 or to the public.

4 (2) That the person has been convicted of or pleaded nolo
5 contendere to any crime, or has been held liable in any civil action
6 by final judgment, or any administrative judgment by any public
7 agency, if that crime or civil or administrative judgment involved
8 any offense involving dishonesty, fraud, or deceit, or any other
9 offense reasonably related to the qualifications, functions, or duties
10 of a person engaged in the business in accordance with the
11 provisions of this division.

12 (b) Within 15 days from the date of a notice of intention to issue
13 an order pursuant to subdivision (a), the person may request a
14 hearing under the Administrative Procedure Act (Chapter 4.5
15 (commencing with Section 11400) of Division 3 of Title 2 of the
16 Government Code). Upon receipt of a request, the matter shall be
17 set for hearing to commence within 30 days after such receipt
18 unless the person subject to this division consents to a later date.
19 If no hearing is requested within 15 days after the mailing or
20 service of such notice and none is ordered by the commissioner,
21 the failure to request a hearing shall constitute a waiver of the right
22 to a hearing.

23 (c) Upon receipt of a notice of intention to issue an order
24 pursuant to this section, the person who is the subject of the
25 proposed order is immediately prohibited from engaging in any
26 activities subject to licensure under the law.

27 (d) Persons suspended or barred under this section are prohibited
28 from participating in any business activity of a finance lender and
29 from engaging in any business activity on the premises where a
30 finance lender is conducting business.

31 ~~SEC. 13.~~

32 *SEC. 23.* Section 22170 is added to the Financial Code, to read:

33 ~~22170. (a) Notwithstanding any other provision of law, it~~
34 ~~is unlawful for any person to knowingly alter, destroy, mutilate,~~
35 ~~conceal, cover up, falsify, or make a false entry in any record,~~
36 ~~document, or tangible object with the intent to impede, obstruct,~~
37 ~~or influence the administration or enforcement of any provision~~
38 ~~of this division.~~

39 ~~(b) Notwithstanding any other provision of law, it~~
40 ~~is unlawful for any person to knowingly make an untrue statement to the~~

1 commissioner during the course of licensing, ~~an investigation or~~
2 ~~examination.~~ *investigation, or examination, with the intent to*
3 *impede, obstruct, or influence the administration or enforcement*
4 *of any provision of this division.*

5 ~~(e) Any person who violates any provision of this section shall~~
6 ~~be liable for any administrative, civil, or criminal penalty~~
7 ~~authorized by law.~~

8 ~~SEC. 14.~~

9 *SEC. 24.* Section 23011.5 is added to the Financial Code, to
10 read:

11 23011.5. (a) The commissioner may, after appropriate notice
12 and opportunity for hearing, by order, censure or suspend for a
13 period not exceeding 12 months, or bar from any position of
14 employment, management, or control any deferred deposit
15 originator, or any other person, if the commissioner finds either
16 of the following:

17 (1) That the censure, suspension, or bar is in the public interest
18 and that the person has committed or caused a violation of this
19 division or rule or order of the commissioner, which violation was
20 either known or should have been known by the person committing
21 or causing it or has caused material damage to the deferred deposit
22 originator, or to the public.

23 (2) That the person has been convicted of or pleaded nolo
24 contendere to any crime, or has been held liable in any civil action
25 by final judgment, or any administrative judgment by any public
26 agency, if that crime or civil or administrative judgment involved
27 any offense involving dishonesty, fraud, or deceit, or any other
28 offense reasonably related to the qualifications, functions, or duties
29 of a person engaged in the business in accordance with the
30 provisions of this division.

31 (b) Within 15 days from the date of a notice of intention to issue
32 an order pursuant to subdivision (a), the person may request a
33 hearing under the Administrative Procedure Act (Chapter 4.5
34 (commencing with Section 11400) of Division 3 of Title 2 of the
35 Government Code). Upon receipt of a request, the matter shall be
36 set for hearing to commence within 30 days after such receipt
37 unless the person subject to this division consents to a later date.
38 If no hearing is requested within 15 days after the mailing or
39 service of such notice and none is ordered by the commissioner,

1 the failure to request a hearing shall constitute a waiver of the right
2 to a hearing.

3 (c) Upon receipt of a notice of intention to issue an order
4 pursuant to this section, the person who is the subject of the
5 proposed order is immediately prohibited from engaging in any
6 activities subject to licensure under the law.

7 (d) Persons suspended or barred under this section are prohibited
8 from participating in any business activity of a deferred deposit
9 originator and from engaging in any business activity on the
10 premises where a deferred deposit originator is conducting
11 business.

12 ~~SEC. 15.~~

13 *SEC. 25.* Section 23015 is added to the Financial Code, to read:

14 23015. (a) ~~Notwithstanding any other provision of law, it~~
15 *is unlawful for any person to knowingly alter, destroy, mutilate,*
16 *conceal, cover up, falsify, or make a false entry in any record,*
17 *document, or tangible object with the intent to impede, obstruct,*
18 *or influence the administration or enforcement of any provision*
19 *of this division.*

20 (b) ~~Notwithstanding any other provision of law, it~~
21 *is unlawful for any person to knowingly make an untrue statement to the*
22 *commissioner during the course of licensing, an investigation or*
23 *examination; investigation, or examination, with the intent to*
24 *impede, obstruct, or influence the administration or enforcement*
25 *of any provision of this division.*

26 (c) ~~Any person who violates any provision of this section shall~~
27 ~~be liable for any administrative, civil, or criminal penalty~~
28 ~~authorized by law.~~

29 *SEC. 26.* Section 30218 is added to the Financial Code, to
30 read:

31 30218. (a) *It is unlawful for any person to knowingly alter,*
32 *destroy, mutilate, conceal, cover up, falsify, or make a false entry*
33 *in any record, document, or tangible object with the intent to*
34 *impede, obstruct, or influence the administration or enforcement*
35 *of this division.*

36 (b) *It is unlawful for any person to knowingly make an untrue*
37 *statement to the commissioner during the course of licensing,*
38 *investigation, or examination, with the intent to impede, obstruct,*
39 *or influence the administration or enforcement of any provision*
40 *of this division.*

1 *SEC. 27. Section 30609 is added to the Financial Code, to*
2 *read:*

3 *30609. (a) The commissioner may, after appropriate notice*
4 *and opportunity for hearing, by order, censure or suspend for a*
5 *period not exceeding 12 months, or bar from any position of*
6 *employment, management, or control any person who operates a*
7 *securities depository, or any other person, if the commissioner*
8 *finds either of the following:*

9 *(1) That the censure, suspension, or bar is in the public interest*
10 *and that the person has committed or caused a violation of this*
11 *division or rule or order of the commissioner, which violation was*
12 *either known or should have been known by the person committing*
13 *or causing it or has caused material damage to the securities*
14 *depository, or to the public.*

15 *(2) That the person has been convicted of or pleaded nolo*
16 *contendere to any crime, or has been held liable in any civil action*
17 *by final judgment, or any administrative judgment by any public*
18 *agency, if that crime or civil or administrative judgment involved*
19 *any offense involving dishonesty, fraud, or deceit, or any other*
20 *offense reasonably related to the qualifications, functions, or duties*
21 *of a person engaged in the business in accordance with the*
22 *provisions of this division.*

23 *(b) Within 15 days from the date of a notice of intention to issue*
24 *an order pursuant to subdivision (a), the person may request a*
25 *hearing under the Administrative Procedure Act (Chapter 4.5*
26 *(commencing with Section 11400) of Division 3 of Title 2 of the*
27 *Government Code). Upon receipt of a request, the matter shall be*
28 *set for hearing to commence within 30 days after such receipt*
29 *unless the person subject to this division consents to a later date.*
30 *If no hearing is requested within 15 days after the mailing or*
31 *service of such notice and none is ordered by the commissioner,*
32 *the failure to request a hearing shall constitute a waiver of the*
33 *right to a hearing.*

34 *(c) Upon receipt of a notice of intention to issue an order*
35 *pursuant to this section, the person who is the subject of the*
36 *proposed order is immediately prohibited from engaging in any*
37 *activities subject to licensure under the law.*

38 *(d) Persons suspended or barred under this section are*
39 *prohibited from participating in any business activity of a securities*

1 *depository and from engaging in any business activity on the*
2 *premises where a securities depository is conducting business.*

3 ~~SEC. 16.~~

4 *SEC. 28.* Section 50123 of the Financial Code is amended to
5 read:

6 50123. (a) A license shall remain in effect until suspended,
7 surrendered, or revoked.

8 (b) A licensee that ceases to engage in the business regulated
9 by this division and desires to no longer be licensed shall inform
10 the commissioner in writing and, at that time, surrender the license
11 and all other indicia of licensure to the commissioner. The licensee
12 shall file a plan for the withdrawal from regulated business, and
13 the plan shall include a timetable for the disposition of the business.
14 The plan shall also include a closing audit, *review, or other agreed*
15 *upon procedures* performed by an independent certified public
16 accountant ~~or a review or other procedure~~ prescribed by rule or
17 order of the commissioner. Upon receipt of the written notice and
18 plan, the commissioner shall review the plan and, if satisfactory
19 to the commissioner, shall accept the surrender of the license. A
20 license is not surrendered until its tender is accepted in writing by
21 the commissioner after a review, and a finding has been made on
22 the licensee's plan required to be filed by this section, and a
23 determination has been made that there is no violation of this law.

24 (c) A licensee may not surrender its license under this division
25 and, under the authority of a real estate license, subsequently
26 engage in residential mortgage lending or servicing activities that
27 are subject to this division, unless the licensee has been licensed
28 under this division for a period of five years or more.

29 *SEC. 29.* Section 50205 of the Financial Code is amended to
30 read:

31 50205. (a) A licensee shall maintain a surety bond in
32 accordance with this subdivision. The bond shall be used for the
33 recovery of expenses, fines, and fees levied by the commissioner
34 in accordance with this division or for losses or damages incurred
35 by borrowers or consumers as the result of a licensee's
36 noncompliance with the requirements of this division. The bond
37 shall be payable when the licensee fails to comply with a provision
38 of this division and shall be in the amount of fifty thousand dollars
39 (\$50,000), and may be increased by order of the commissioner to
40 one hundred thousand dollars (\$100,000) upon a determination by

1 the commissioner that the licensee is not in compliance with any
2 provision of this chapter or any rule or order adopted or issued by
3 the commissioner to implement or enforce provisions of this
4 chapter. The bond shall be payable to the commissioner and issued
5 by an insurance company authorized to do business in this state.
6 ~~A copy of the~~ *An original surety* bond, including any and all riders
7 and endorsements executed subsequent to the effective date of the
8 bond, shall be filed with the commissioner for review and approval
9 prior to execution and filed with the commissioner within 10 days
10 of its execution.

11 (b) When an action is commenced on a licensee's bond, the
12 commissioner may require the filing of a new bond. Immediately
13 upon the recovery of an action on the bond, the licensee shall file
14 a new bond. Failure to file a new bond within 10 days of the
15 recovery on a bond, or within 10 days after notification by the
16 commissioner that a new bond is required, constitutes sufficient
17 grounds for the suspension or revocation of the license.

18 ~~SEC. 17.~~

19 *SEC. 30.* Section 50512 is added to the Financial Code, to read:

20 50512. (a) ~~Notwithstanding any other provision of law, it~~ *It*
21 is unlawful for any person to knowingly alter, destroy, mutilate,
22 conceal, cover up, falsify, or make a false entry in any record,
23 document, or tangible object with the intent to impede, obstruct,
24 or influence the administration or enforcement of any provision
25 of this division.

26 (b) ~~Notwithstanding any other provision of law, it~~ *It* is unlawful
27 for any person to knowingly make an untrue statement to the
28 commissioner during the course of licensing, ~~an investigation or~~
29 ~~examination.~~ *investigation, or examination, with the intent to*
30 *impede, obstruct, or influence the administration or enforcement*
31 *of any provision of this division.*

32 (c) ~~Any person who violates any provision of this section shall~~
33 ~~be liable for any administrative, civil, or criminal penalty~~
34 ~~authorized by law.~~

35 ~~SEC. 18.~~

36 *SEC. 31.* No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.